

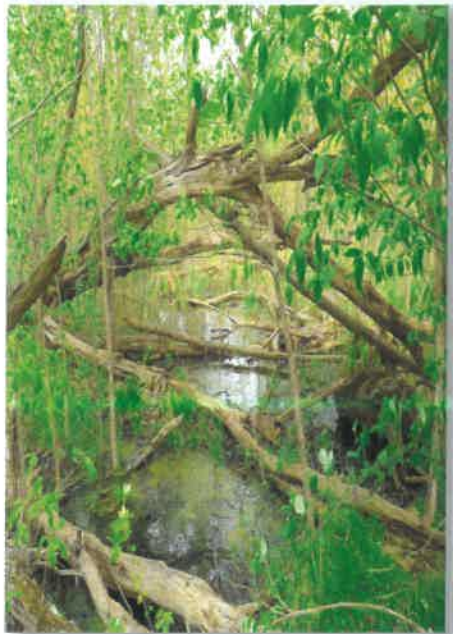
Wetlands and Conservation Compliance

WHAT EVERY OHIO FARMER NEEDS TO KNOW



**United States
Department of
Agriculture**

Wetland conservation has been an integral part of Ohio agriculture since the passage of the Food Security Act in 1985 (1985 Farm Bill). High rates of wetland conversion and increased public awareness of the environmental benefits associated with wetlands prompted Congress to enact this legislation.



Historically, wetlands have largely been perceived as wasted space and many acres of high quality wetlands have been converted to other uses considered to be more beneficial at the time. A 1990 U.S. Fish and Wildlife study estimates that less than 90 percent of Ohio's original wetlands still existed by the early 1980s.

Through the wetland conservation provisions of the 1985 Farm Bill, and restoration efforts through other federal programs, Ohio continues to make progress in protecting and restoring wetlands in the state.

This document is intended to give a brief overview of the wetland conservation provisions of the 1985 Farm Bill, as amended; and pertains to USDA - Natural Resources Conservation Service (NRCS wetland determinations only. It is not intended to cover all possible situations, but can be used as a quick reference to familiarize yourself with USDA wetland compliance provisions.

Natural Resources Conservation Service
Helping People Help the Land.

What Are Wetlands?

A wetland is an area of land that exhibits the following three criteria.

1. Predominance of hydric soils (soils formed under wet conditions).
2. Prevalence of hydrophytic vegetation (plants adapted to wet soil conditions).
3. Wetland hydrology (sufficient surface water and/or groundwater to support hydrophytic vegetation.)

Although the term “wetland” brings to mind areas of shallow water, cattails, and landing ducks, many of Ohio’s wetlands are open or forested wetlands that are only seasonally saturated and that may, or may not, hold surface water temporarily.

Why Protect Wetlands?

Concerns over wetland losses, and the resulting environmental health issues, prompted Congress to enact legislation to protect wetlands and maintain their beneficial functions.

Wetland functions include:

- Improving water quality
- Flood control
- Sediment control
- Nutrient cycling
- Maintaining critical wildlife habitat
- Recharging groundwater

Farm Bill Wetland Provisions *Swampbuster*

Swampbuster is a conservation compliance provision that was introduced in the 1985 Farm Bill to discourage the production of agricultural commodities on converted wetlands. The rule requires that people who convert wetlands to allow production of agricultural commodities will be ineligible for USDA benefits until the functions of the converted wetlands are mitigated or restored.

Maintaining USDA Program Eligibility

To maintain eligibility, participants must not produce crops on converted wetlands after December 23, 1985, and must not convert wetlands to make agricultural production possible after November 28, 1990.

Any activity that alters natural wetlands, making possible the production of an agricultural commodity or forage crop, is prohibited. These activities may include:

- Filling
- Draining (surface ditching or subsurface tiling)
- Land leveling
- Clearing woody vegetation where stumps are removed

In most cases, drainage systems and other conversions that existed prior to December 23, 1985, can be maintained to the extent they existed at that time. Consult your local NRCS office for details.

If Swampbuster is violated, all USDA farm program benefits may be lost. Participants who plant a crop on wetlands that were converted between December 23, 1985, and November 28, 1990, will not be eligible for certain benefits any year a crop is planted. After November 28, 1990, participants who have altered the wetland to make crop production possible will not be eligible for benefits until the previous functions are restored or mitigated. Please note that ineligibility applies to ***current and future participants*** associated with the wetland.

NRCS wetland determinations are conducted to implement the wetland conservation provisions of the 1985 Farm Bill. The determinations/delineations may not be valid for identifying the extent of the U.S. Army Corps of Engineers’ (USACE) Clean Water Act jurisdiction for wetland sites. If you intend to conduct any activity that constitutes a discharge of dredged or fill material into wetlands or other waters, you should request a jurisdictional determination from the USACE prior to starting the work.

Exemptions to Swampbuster Provisions

Several exemptions have been included in the wetland conservation provisions. Consult with your NRCS wetland specialist to determine if any apply to your farm. A few that are commonly used are:

Prior Converted (PC):

Wetlands converted prior to December 23, 1985, on which an agricultural commodity was produced at least once prior to this date, and as of this date, did not support woody vegetation. No restrictions on use.

Artificial Wetlands (AW):

Wetland areas created due to the activities of man. No restrictions on use.

Manipulated Wetlands (WX):

Wetlands that have been manipulated but not for the purpose of, or making possible, the production of an agricultural commodity.

Mitigation Exemption (MIW):

Compensation through wetland restoration, enhancement, or creation for wetland functions that are lost on a converted wetland. Mitigation areas are generally located on the same property as the converted wetland and often require a greater ratio of restored wetland to converted wetland acres.

Other Provisions

Scope and Effect:

In some cases, drainage may be maintained as it existed prior to December 23, 1985. No added drainage may be achieved after this date.

Non-Agricultural Activities:

Swampbuster does not regulate non-agricultural activities, such as road or home site construction.

Most wetlands, including "Artificial Wetlands" and wetlands converted for non-agricultural activities, fall under U.S. Army Corps of Engineers' (USACE) jurisdiction under Section 404 of the Clean Water Act. Contact the USACE before conducting any planned activities in or around potential wetlands.

Wetland Determinations

It is the landowner's or program participant's responsibility to contact USDA if he or she plans to do any type of work in wet areas. Prior to starting any work, the landowner should visit the local USDA Service Center to review any existing wetland determinations and fill out an AD-1026 form at the Farm Service Agency (FSA) office if a determination is needed.

Most wetland determinations completed prior to July 3, 1996, are not considered "certified", and therefore may not be valid for determining compliance with the provisions.

NRCS will determine if a producer's land has wetlands that are subject to the Swampbuster provisions. Depending on the circumstances, the agency may conduct an off-site or an on-site determination.



If you disagree with the NRCS determination, you will be provided the opportunity to appeal the determination before it becomes final.

Frequently Asked Questions

Are “isolated” wetlands subject to Swampbuster?

Yes. All wetlands, regardless of size and proximity to streams, drainages etc., are subject to the Swampbuster provisions.

Can I clear trees from a wetland area?

Normal timber harvesting practices are generally not affected by Swampbuster if the site remains in timber production and cut stumps remain intact at ground level. Land clearing on a wetland involving stump grinding or stump removal, making possible the production of an agricultural commodity, is prohibited. (Note: Suppression of woody re-growth on logged wetlands may lead to a Swampbuster violation.)

Can I install subsurface drain tile or surface drainage ditches on an existing crop field?

In most cases, drainage systems that existed prior to December 23, 1985, can be maintained. Before installing or maintaining any drainage system, you should contact NRCS. Installing any drainage system in or adjacent to a regulated wetland is prohibited. (Note: Fields determined by NRCS to be prior converted (PC) cropland are exempt from USDA wetland compliance regulations. After confirming the PC determination, planned activities can be completed without further delay, as long as adjacent wetland areas are unaffected.

When purchasing or renting a farm, what questions should be asked about wetlands?

Have certified wetland determinations been completed? What types of wetlands are present and what are the restrictions? Are there any wetland conversions that occurred on the property after December 23, 1985? If there are converted wetlands, what options are available to resolve the situation?

What types of wetlands could be present on my property?

Wetlands occur in many different forms and on a wide range of land uses. They commonly occur in wooded areas, pastures, hayfields, cropland, and odd areas around the farm. NRCS can assist you to determine what wetland determinations have been completed on your property and if a certified wetland determination might be needed.



How to Contact NRCS

To get more information about wetlands, contact your local NRCS office. Look in the phone book under "U.S. Government Department, Agriculture, Department of" or access the "USDA Service Center Locator" website at:

<http://offices.sc.egov.usda.gov/locator/app>

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